

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

Misprints in the Office Action

As a preliminary matter, applicant notes the following misprints that were identified by the Examiner during an interview on March 15, 2005. The coversheet indicates that the office action is non-final; whereas, the text of the office action indicates the office action is final. According to the Examiner, the office action is final. The office action, in the text, mentions that objection regarding the abstract has been withdrawn while mentioning that abstract has been objected to. According to the Examiner, the objection was withdrawn and there is no outstanding objection to the abstract of the disclosure.

Claim Rejections under 35 U.S.C. § 103

Claims 1-33 have been rejected for allegedly being unpatentable over Raymond et al. ("fetchmail (1)", <http://web.archive.org/web/20000903061823/http://tuxedo.org/~esr/fetchmail/fetchmail-man.html>; hereinafter "Raymond") in view of Fijolek et al. (U.S. Pat. No. 6,351,773; hereinafter "Fijolek").

Raymond discloses an electronic mail retrieval and forwarding utility referred to as "Fetchmail". Fetchmail retrieves mail from a mailserver based on several options. After mail is retrieved, Fetchmail may or may not idle.

Fijolek discloses methods for providing restricted access for a cable modem to a data-over-cable system. As one way of restricting access to the data-over-cable system, Fijolek

discloses the use of a DHCP "lease" in conjunction with a connection timer. This is the only type of time-restricted access discussed in Fijolek.

Claims 1, 11, 21, 25, and 30-33 are directed to time-based connections. The rejections of these claims and the underlying rationale of these rejections are traversed.

At a minimum, § 103 requires the following criteria to establish a prima facie case of obviousness: (1) the prior art reference (or references when combined) must teach or suggest all the claim limitations, and (2) there must be some suggestion or motivation to combine reference teachings (see MPEP 706.02(j)). These criteria have not been met.

(1) No Teaching or Suggestion of All Claim Limitations

Neither Fijolek nor Raymond teach or suggest determining, after completion of data transactions between a first and second device, and before any data transactions other than the completed data transactions have begun between the first and second devices, if a time-related event has occurred, and similar limitations; thus, all of the claim limitations have not been taught or suggested and the rejections should be withdrawn.

Independent claims 1, 11, 21, 25, and 30-33 have been amended to clarify the claimed subject matter. The independent claims include language directed toward conditional timing. Conditional timing can be complex because timing is not based merely on the passing of time, rather, a combination of a passing of time and circumstances can be involved such that conditional timing is conditioned on events other than the mere passage of time. For example, the independent claims, in general, are directed to determining if a time-related event has occurred, where the determining is performed after completion of

data transactions between a first and second device, and before any other data transactions have begun. In this manner, for example, where a time-related event is the exceeding of a threshold amount of time, that time-related event only happens in limited circumstances, such as when a data transaction has been completed and before another data transaction has begun. Consider the exemplary language of claim 1:

"determining, after completion of each of one or more data transactions between the first device and the second device, and before any data transactions other than the completed data transactions have begun between the first and second devices, determining if a time-related event has occurred since establishing the connection between the first device and the second device (emphasis added)."

As discussed above, Fijolek teaches use of DHCP leases in a data over cable system. To continue using the lease, a client attempts to renew a lease. "If the lease expires ...the client moves to INIT state, MUST immediately stop any other network processing and requests network initialization parameters as if the client were uninitialized..." (emphasis added) (see RFC2131, "Dynamic Host Configuration Protocol," available from <http://www.ietf.org/rfc/rfc2131.txt>). In this manner, Fijolek does not disclose or teach conditional timing; rather, Fijolek implicitly discloses the use of simple timing where, upon expiration of a period of time, a connection is terminated. Thus, Fijolek does not teach determining, after completion of data transactions between a first and second device, and before any data transactions other than the completed data transactions have begun between the first and second devices, if a time-related event has occurred.

Raymond fails to teach or suggest the use of conditional timing; and, in particular, determining, after completion of data transactions between a first and second device, and before any data transactions other than the completed data transactions have begun between the first and second devices, if a time-related event has occurred, and similar language. Thus, Raymond fails to disclose subject matter of the independent claims.

Because neither Fijolek nor Raymond teach or suggest features of the claims 1, 11, 21, 25, and 30-33, these rejections should be withdrawn.

(2) No Motivation to Combine Reference Teachings

The burden for establishing a motivation to combine the references has not been met, thus the rejections should be withdrawn.

The burden for establishing a motivation to combine has not been met with respect to independent claims 1, 11, 21, 25, and 30-33 for at least the reasons that (A) a reference teaches away from a combination of the references that would result in the claimed subject matter; (B) the alleged motivation is unrelated to the Fijolek reference; and (C) no evidentiary support has been given for the alleged motivation to combine.

(A) Teaching Away

Fijolek implicitly teaches away from a combination of the references that would result in the claimed subject matter.

The present independent claims include language directed toward determining, after completion of data transactions between a first and second device, and before any data transactions other than the completed data transactions have begun between the first and second devices, if a time-related event has occurred (see above).

Fijolek discloses the use of DHCP as a means for time-restricted access. In an implementation of DHCP, connections are terminated immediately, without regard to whether or when data transactions occur (see above); thus, a determination of whether time has passed is made without regard to whether or when data transactions occur (see RFC2131, "Dynamic Host Configuration Protocol," available from <http://www.ietf.org/rfc/rfc2131.txt>).

Thus, Fijolek teaches away from the subject matter of the independent claims that includes determining, after completion of data transactions between a first and second device, and before any data transactions other than the completed data transactions have begun between the first and second devices, if a time-related event has occurred, as Fijolek is concerned with use of a simple timer that allows for immediate termination of a connection based on the expiration of a lease.

(B) Fijolek is Unrelated to Raymond

There is no motivation to combine the references because the references are unrelated to each other.

Raymond discloses an electronic mail utility. Raymond is focused on retrieving electronic mail from an electronic mail server. Fijolek, by contrast, is focused on a data-over-cable system that uses DHCP. Both the overall system, which is focused on data-over-cable, and the specific disclosure of DHCP, which is a very low-level network protocol, are unrelated to an electronic mail utility.

The references are so unrelated that a combination of the references would result in something other than the claimed subject matter. For example, because Raymond is focused on an electronic mail utility and DHCP is focused on a low-level network protocol, a combination, if possible, might result in an

electronic mail utility that uses TCP/IP, where the TCP/IP uses DHCP to restrict access to the TCP/IP resources. In that combination, determining if a time-related event has occurred would not happen after completion of data transactions between a first and second device, and before any other data transactions have begun; rather, a determination of an expired period of time would happen independent of whether data transactions are occurring (see above).

(C) No Evidentiary Support

In addition, a prima facie case for obviousness has not been met because there should be evidentiary support for the alleged motivation to combine.

The alleged motivation to combine relies on the alleged knowledge of one of ordinary skill in the art, as "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to modify Raymond..." (see page 3).

Applicant submits that the alleged motivation to combine is not of knowledge to one of ordinary skill in the art, as it would not have been obvious to modify Raymond as alleged in the office action. Thus, the rejection of the claims should be withdrawn so long as evidentiary support is not provided for this alleged motivation. See MPEP 2144.03 (relying on Zurko, 258 F.3d at 1385; "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based."); MPEP 2144.03.C ("If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence.").

Thus, for at least the reasons stated above, claims 1, 11, 21, 25, and 30-33 should be allowed. In addition, claims 2-10, 12-20, 22-24, and 26-29 should be allowed because they depend, directly or indirectly, on allowable claims 1, 11, 21, 25, and 30-33.

#### Conclusion

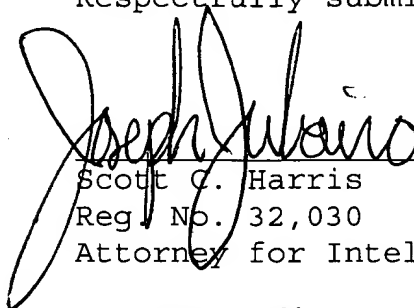
In view of the above amendments and remarks, therefore, all of the claims should be in condition for allowance. A formal notice to that effect is respectfully requested.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicant asks that all claims be allowed. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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